

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

WENDELL TERRY NELSON, <i>et al.</i> ,)	
)	
Plaintiffs,)	
vs.)	NO. CIV-12-0008-HE
)	
B. BARTON, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiff Wendell Terry Nelson, a California prisoner appearing *pro se*, filed this action pursuant to 42 U.S.C. § 1983, along with seven other prisoners who signed the complaint, on behalf of themselves and all other similarly situated Muslims. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Bana Roberts for initial proceedings. The court previously adopted the magistrate judge's recommendations that plaintiffs' motion to certify a class be denied and that plaintiffs Dotson, Ali, Allen, Wright, Siebert, Bolton and Nix be dismissed from the action without prejudice to refile their claims separately. The magistrate judge has now recommended that the claims of the remaining plaintiff, Mr. Nelson, be dismissed without prejudice.


Because he had been transferred to a California state prison and was close to being released, the magistrate judge ordered plaintiff Nelson to submit an amended application to proceed *in forma pauperis* ("*ifp*") to insure he remained qualified for *ifp* status. When plaintiff failed to comply with the magistrate judge's order, she recommended the dismissal of the action without prejudice. Plaintiff did not object to the Report and Recommendation

and thus waived his right to appellate review of the issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). *See* 28 U.S.C. § 636(b)(1)(C).

Accordingly, the court adopts Magistrate Roberts' Report and Recommendation and dismisses this action without prejudice to refiling.

IT IS SO ORDERED.

Dated this 11th day of September, 2012.



JOE HEATON
UNITED STATES DISTRICT JUDGE